

***VIA ELECTRONIC TRANSMISSION***

August 13, 2025

HHS Secretary Robert F. Kennedy Jr.  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit” (0991-ZA57)**

Dear Secretary Kennedy,

The Center for Reproductive Rights (the Center) submits this comment in opposition to the Department of Health and Human Services’ (HHS’) “Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of ‘Federal Public Benefit’” (Proposed Rule).<sup>1</sup>

Since 1992, the Center has used the power of law to advance reproductive rights as fundamental human rights worldwide. Our litigation and advocacy over the past 33 years have expanded access to reproductive health care around the nation and the world. We have played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetric care, contraception, safe abortion services, and comprehensive sexuality information. We envision a world where every person participates with dignity as an equal member of society, regardless of gender; where every person is free to decide whether or when to have children and whether or when to get married; where access to quality reproductive health care is guaranteed; and where everyone can make these decisions free from coercion or discrimination.

As an organization committed to advancing policies that uphold reproductive rights as fundamental human rights, including the right to available, high quality, accessible, acceptable reproductive health care,<sup>2</sup> we oppose this rule reinterpreting the definition of “[f]ederal public benefit”<sup>3</sup> on the grounds that it will undermine access to this essential health care for vulnerable immigrant communities. The Proposed Rule presents an extreme revision of nearly 30 years of precedent and will significantly impact the provision of federal benefits across many programs. The lack of time for public input (30 days) is not only deeply inadequate, but it also represents an extreme recklessness on the part of HHS given that the impacted programs comprise over \$27 billion in federal funding.<sup>4</sup> Additionally, the Proposed Rule imposes requirements such that state governments and non-charitable organizations must find additional staffing and capacity to meet

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<sup>1</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 90 Fed. Reg. 31232 (proposed Jul. 14, 2025) [hereinafter “Proposed Rule”].

<sup>2</sup> Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 14: The right to the highest attainable standard of health (Art. 12), (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 80, para.12 (a)-(d), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); ESCR Committee, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016).

<sup>3</sup> 8 U.S.C. § 1611 (c)(1)(a)-(b) (1996).

<sup>4</sup> Fiscal Year 2025 combined funding for Health Start, Community Mental Health Services Block Grant, Community Services Block Grant, Community Health Centers, Mental and Behavioral Health Programs, Projects for Assistance in Transition from Homelessness, Substance Use Prevention, Treatment, and Recovery Services Block Grant and Title X funding.

an increasing need for eligibility verification for programs like Medicaid, Title X, and the Supplemental Nutrition Assistance Program (SNAP).

HHS is reversing nearly 30 years of legal interpretation in a manner that severely limits access to critical health and safety-net programs for millions of immigrants and their families, while imposing new burdens on state and local governments. The Center encourages HHS to withdraw the Proposed Rule on the grounds that it stands to do more public harm than good. At minimum, HHS should pause implementation of this reinterpretation immediately and allow for a full stakeholder engagement process through a proper notice and comment period, in line with the spirit and letter of the Administrative Procedure Act (APA).

## I. Background

Enacted in 1996, PRWORA made a range of federal public benefit programs available only to “qualified immigrants,” subject to certain exceptions.<sup>5</sup> The law defines “qualified immigrants” as a codified list of immigrants, including those with Lawful Permanent Resident Status; refugees; persons granted asylum; certain immigrants from Cuba, Haiti and Pacific Island nations; certain survivors of domestic violence and trafficking; and other specific categories.<sup>6</sup> This excluded some people who are lawfully present, including individuals with Temporary Protected Status, people with nonimmigrant visas, and individuals who were granted deferred action, including Deferred Action for Childhood Arrivals. These restrictions harm both undocumented immigrants and lawfully present individuals.

In 1998, HHS issued a notice interpreting “Federal public benefit” to provide clarity around which of its programs met the definition and would thus be limited to qualified immigrants.<sup>7</sup> This notice identified 31 programs, such as Medicare, Medicaid, Temporary Assistance for Needy Families (TANF), and a range of cash-assistance programs.<sup>8</sup> However, HHS determined other programs were not “Federal public benefits” because they were programs that were deemed to serve the broader community as opposed to individuals, households, or family eligibility units.<sup>9</sup> The notice provided a reasoned interpretation of the statutory definition to explain the manner in which these programs were identified.<sup>10</sup>

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<sup>5</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996).

<sup>6</sup> 8 U.S.C. § 1641(b)-(c).

<sup>7</sup> 63 Fed. Reg. 41658 (Aug. 4, 1998). [Hereinafter PRWORA].

<sup>8</sup> *Id.* at 41658.

<sup>9</sup> *Id.* at 41659-60 (This does not mean, however, that all benefits or services provided by these programs are “Federal public benefits” and require verification. For example, some states may provide LIHEAP funds for weatherization of multi-unit buildings. These funds would not be considered a “Federal public benefit” since the eligibility of individuals, households, or family units is not considered in determining whether such funds will be used to improve the building. Other programs that have been determined to provide “Federal public benefits” under this Notice should consult their Federal program administrators if it is believed that some of the program’s services do not constitute “Federal public benefits.”) (“Many HHS programs are targeted to meet the needs of certain populations such as children or pregnant women. But unless the authorizing statutes require that the characteristics of these groups form the basis for denial of services or benefits, these are not benefits that go to “eligibility units.” The authorizing statutes of these programs identify populations with specific characteristics to clarify the types of services that should be provided; they do not contemplate that providers use variations in individual characteristics as a basis for determining eligibility, on a case by case basis. Therefore a benefit targeted to certain populations based on their characteristics, such as a benefit provided under the Maternal and Child Health program, which provides health services to women and children, is not a “Federal public benefit.”).

<sup>10</sup> *Id.* at 41659-60.

On July 14, 2025, HHS withdrew the 1998 notice and reclassified 13 additional programs as restricted Federal public benefits.<sup>11</sup> These programs include Head Start, the Title X Family Planning Program, and the Health Center Program (*e.g.*, federally qualified health centers funded by the Health Resources and Services Administration) among others.<sup>12</sup> These programs deliver essential services, and restricting access in this manner laid out in the Proposed Rule will harm not only immigrant communities but broader public health and welfare.

## **II. HHS fails to provide “adequate reasons” or “satisfactory explanation” for bypassing rulemaking.**

The Center is alarmed that HHS has, by its own admission, begun enforcing the Proposed Rule before it has been finalized through the notice-and-comment procedures required by the APA.<sup>13</sup> In 1998, shortly after PRWORA went into effect, HHS solicited public input through a 60-day notice and comment period while also noting that it was necessary to apply its interpretation immediately due to the “numerous inquiries regarding the application of the term ‘Federal public benefit’” they were receiving at the time.<sup>14</sup> HHS also noted its concern that additional delay could result in “incorrect administrative actions by agencies or entities” and wanted to allay confusion that could result in individuals or families being denied “critical benefits and services for which, under [that] interpretation, they [were] eligible.”<sup>15</sup> At the time, HHS noted that while PRWORA “creates major economic effects,” the interpretation of “Federal public benefit” did “not have an economic impact” and therefore was not economically significant enough to qualify as a major rule under 5 U.S.C. § 801.<sup>16</sup> Enforcement of the interpretation prior to the conclusion of rulemaking, in that instance, was reasonable to limit harm.

Presently, HHS has not demonstrated adequate reasoning to justify bypassing the standard procedure on this rulemaking. In the Proposed Rule, HHS states that this notice is simply “revising the [1998] interpretation”<sup>17</sup> which would allow the agency to bypass notice-and-comment procedures because “[i]nterpretive rules...do not have the force and effect of law”<sup>18</sup> meaning that the interpretation would be non-binding. However, it is clear that HHS and other agencies promulgating similar notices intend for this interpretation to have the force and effect of law. Given that OIRA has determined that this is an “economically significant regulatory action under section 3(f)(1) of Executive Order 12866” these factors point towards this notice being a major rule. Premature enforcement compounds the Proposed Rule’s harmful consequences by depriving both stakeholders, including states and entities that oversee the provision of these programs, and immigrants who have otherwise been eligible for health care services under these programs, of fair notice and the opportunity for public accountability through the rulemaking process. HHS justifies bypassing the standard comment period for a number of reasons but has presented contradictory rationale for doing so.

### **A. HHS’ implied “good cause” justification is inadequate.**

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<sup>11</sup> Proposed Rule, *supra* note 1.

<sup>12</sup> *Id.* at 31237.

<sup>13</sup> 5 U.S.C. § 553(b)(3)(B) and § 706(2)(A).

<sup>14</sup> PRWORA, *supra* note 7, at 41661.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Proposed Rule, *supra* note 1, at 31232.

<sup>18</sup> *Shalala v. Guernsey Memorial Hospital*, 514 U. S. 87,99 (1995).

While the Proposed Rule does not state that it is using the “good cause” exception outright as outlined in 5 U.S.C. § 553, HHS implies that it is bypassing standard notice-and-comment procedures because “[a]ny delay would be contrary to the public interest” and to comply with President Trump’s declaration of an “emergency” at the Southern Border.<sup>19</sup> HHS fails to provide a genuine cause for urgency that would justify bypassing public input, and instead assumes that the revocation of such benefits would deter immigrants and migrants from seeking to enter the United States.<sup>20</sup> The so-called “national emergency,” which was first issued by President Trump in February 2019<sup>21</sup> and reinstated again in January 2025,<sup>22</sup> has been subject to several legal challenges by states and civil liberties groups on the grounds that it violated the Constitution’s separation of powers and bypassed Congress’s appropriations authority.<sup>23</sup> Advocates and immigration experts have questioned the nature of the current “emergency,” noting that the number of people presenting at the border at the time the emergency was declared had dropped 77% from December 2023 to August 2024, and that “the number of people entering the country between the ports of entry ha[ve] fallen to lows not seen since August 2020.”<sup>24</sup>

Exceptions to notice and comment rulemaking are “to be narrowly construed and only reluctantly countenanced . . . . The [good cause] exception is not an escape clause; its use should be limited to emergency situations.”<sup>25</sup> Demonstrating an “emergency situation” justifying use of the good cause exception is no small burden—in federal court, the agency must be prepared to “point to something *specific* that illustrates a *particular harm* that will be caused by the delay required for notice and comment” to circumvent the APA’s demands.<sup>26</sup> Further, courts have found that some “exigency” is required to merit dispensing with Section 553’s notice and rulemaking requirements.<sup>27</sup> The previous interpretation of this regulation outlined in the 1998 notice has been the agency position on the definition of “Federal public benefits” for over 25 years, including during the February 2019 emergency declaration. As such, HHS has not shown an “exigency” which justifies the need to bypass a formal comment period and begin immediate enforcement of this Proposed Rule.

### **B. HHS has not provided satisfactory explanation for bypassing OIRA determination on the impact of the rule.**

By its own admission, HHS states in Section VI of the Proposed Rule, that this rule “may result in an annual effect on the economy of \$100 million or more” and that “OIRA has determined that this notice falls within the scope of a 5 U.S.C. 804(2)” – a major rule.<sup>28</sup> The APA requires that major rules must be subject to a 60-day notice and comment period. HHS simply glosses over

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<sup>19</sup> Proposed Rule, *supra* note 1 at 31238; Proclamation No. 10,886, 90 Fed. Reg. 8327 (Jan. 29, 2025).

<sup>20</sup> Proposed Rule, *supra* note 1 at 31238.

<sup>21</sup> Proclamation No. 9844, 84 FR 4949 (Feb. 20, 2019).

<sup>22</sup> Proclamation No. 10,886, 90 Fed. Reg. 8327 (Jan. 29, 2025).

<sup>23</sup> *Sierra Club v. Trump — Challenge to Trump’s National Emergency Declaration to Construct a Border Wall*, AM. C.L. UNION, <https://www.aclu.org/cases/sierra-club-v-trump-challenge-trumps-national-emergency-declaration-construct-border-wall> (last updated Jul. 20, 2021).

<sup>24</sup> John Gramlich, *Migrant encounters at U.S.-Mexico border have fallen sharply in 2024*, PEW RSCH. CTR. (Oct. 1, 2024), <https://www.pewresearch.org/short-reads/2024/10/01/migrant-encounters-at-u-s-mexico-border-have-fallen-sharply-in-2024/>; Rebecca Santana, *ACLU sues over Trump shutting down asylum access at the southern border*, AP NEWS (Feb. 3, 2025) <https://apnews.com/article/immigration-asylum-lawsuit-trump-border-aclu-cb1b4cdf84911e765f02be5dc5ac1b2e>.

<sup>25</sup> *Utility Solid Waste Activities Grp. v. E.P.A.*, 236 F.3d 749, 754 (D.C. Cir. 2001) (internal quotation marks and citations omitted).

<sup>26</sup> *Biden v. Mo.*, 595 U.S. 87, 106 (2022) (J. Alito, dissenting) (emphasis added).

<sup>27</sup> See e.g., *Natural Resources Defense Council, Inc. v. Evans*, 316 F.3d 904, 912 (9<sup>th</sup> Cir. 2003); *Chamber of Commerce of U.S. v. S.E.C.*, 443 F.3d 890, 908 (D.C. Cir. 2006).

<sup>28</sup> Proposed Rule, *supra* note 1 at 31,238.

this determination by stating that it is consistent with the APA pursuant to 5 U.S.C. 553(b)(A) and (d)(2), which stands contrary to the OIRA determination that this is a major rule, and provides no clear justification for why it is bypassing a major component of notice-and-comment procedures as clearly defined by the APA.

**C. This Proposed Rule is arbitrary and capricious because HHS has not provided a sufficiently reasoned explanation for the drastic policy shift.**

“[A]n agency can only change an existing policy if it provides a ‘reasoned explanation’ for disregarding or overriding the basis for the prior policy.”<sup>29</sup> This is especially important when, for example, “its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.”<sup>30</sup> As noted previously, the current interpretation of this regulation outlined in the 1998 notice has been the agency position on the definition of “Federal public benefits” for over 25 years, which has engendered serious reliance interests not only in those individuals and families receiving the services, but also those states and other organizations which are implementing the underlying programs. As such, bypassing a formal comment period and beginning immediate enforcement of this Proposed Rule on contradictory rationale and dubious legal arguments make this Proposed Rule arbitrary and capricious.

**III. Verification requirements will burden state and local governments and harms immigrant communities.**

Although PRWORA exempts nonprofit charities from checking immigration status, it does not exempt state and local governments, who already expend significant resources verifying eligibility for programs like Medicaid and SNAP. If more programs are newly classified as Federal public benefits, states and localities would be required to add new systems, staff training, and policies without any additional funding to do so. Even before Congress passed H.R. 1, state budgets were under immense strain.<sup>31</sup> With the added federal funding cuts included in the “One Big Beautiful Bill Act”, the additional cost of federal benefits programs pushed back onto states, and the funding that states are scrambling backfilling due to funding freezes, such as Title X funds, these new requirements stand to be devastatingly burdensome on states.<sup>32</sup>

Attempting to implement this Proposed Rule prior to finalization is especially egregious given its disproportionate impact on immigrant communities. While immigrants generally use far fewer federal benefits than born citizens, those who do rely on those benefits not only for their survival, but for their ability to maintain housing, access health care, and care for their families.<sup>33</sup> Any

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<sup>29</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125-26 (June 20, 2016) (citing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 103 (1983)).

<sup>30</sup> *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>31</sup> One Big Beautiful Bill Act, Pub. L. 119-21, H.R. 1, 119th Cong. (2025); Wesley Tharpe, Roundup: State Budgets Increasingly Strained as House, Senate Republican Plans Would Impose Major Costs, CTR. ON BUDGET AND POL’Y PRIORITIES (June 24, 2025), <https://www.cbpp.org/research/state-budget-and-tax/roundup-state-budgets-increasingly-strained-as-house-senate>.

<sup>32</sup> Wesley Tharpe, Roundup: State Budgets Increasingly Strained as House, Senate Republican Plans Would Impose Major Costs, CTR. ON BUDGET AND POL’Y PRIORITIES (June 24, 2025), <https://www.cbpp.org/research/state-budget-and-tax/roundup-state-budgets-increasingly-strained-as-house-senate>

<sup>33</sup> Alex Nowrasteh and Jerome Famularo, *Immigrant and Native Consumption of Means-Tested Welfare and Entitlement Benefits in 2022*, CATO INST. (Feb. 18, 2025), <https://www.cato.org/briefing-paper/immigrant-native-consumption-means-tested-welfare-entitlement-benefits-2022#> (Immigrants were 14.3 percent of the US population and consumed just 11.9 percent of all means-tested welfare and entitlement benefits in 2022. Noncitizen immigrants—including those lawfully present in the United States on various temporary visas, lawful permanent residents, and illegal immigrants—consumed 54 percent less welfare than native-born Americans. Noncitizens were 7.3 percent of the population and consumed just 3.5 percent of all welfare.).

change to eligibility, particularly a change that threatens exclusion from a major benefit, must be implemented through clear, transparent, and lawful processes. Further, this rushed enforcement exacerbates a climate of fear and confusion in immigrant communities and discourages lawful participation in benefit programs, for which some immigrants or their U.S. citizen children remain eligible. This Proposed Rule erodes trust in public institutions, and invites administrative error, discrimination, and improper denials.

#### **IV. Conclusion**

HHS' attempt to enforce a still-pending rule is a clear violation of the APA and a disservice to the values of democratic governance. It undermines the procedural safeguards that ensure accountability, transparency, and equity in the development of federal policy. Furthermore, it undermines the public health and safety of immigrant communities, creates fear and confusion, and will likely contribute to worsening health outcomes. For these reasons, we urge HHS to withdraw the rule.

The Center appreciates the opportunity to comment on this Proposed Rule. For additional information about the issues raised in this letter, please contact Vandana Ranjan, Senior Federal Policy Adviser, Maternal Health, at [vranjan@reprorights.org](mailto:vranjan@reprorights.org).

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